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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,280

12/09/2003

John S. Frazee

4990

40808

7590

10/13/2006

OFFICE OF DONALD GRANT KELLY  
INTELLECTUAL ASSET MANAGEMENT ASSOCIATES, LLC  
515 KING STREET, SUITE 420  
ALEXANDRIA, VA 22314

EXAMINER

HOGAN, JAMES SEAN

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/731,280	Applicant(s) FRAZEE, JOHN S.	
	Examiner James S. Hogan	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.  
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,10,11 and 15-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☐ Claim(s) 1,3,6,10, 11 and 15-17 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed July 17, 2006 have been fully considered but they are not persuasive. The rejection of April 20, 2006, repeated below, stands as a firm assessment of the claims within the instant application and positively recites a structure capable of performing the intended use.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3 6, 10, 11, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,962,733 to Parry in view of U.S. Patent No. 2,629,393 to Langdon.

Regarding claim 1, Parry discloses a showerhead device, having an air pathway (35) for being positioned along a water pathway (11-to13), having an upstream portion (11) and a downstream portion (13 and beyond), upstream of spray holes (not numbered or shown, but inherently implied, and notoriously well known in the art) in a showerhead (15), wherein when water is turned off, air is drawn through the air pathway the said showerhead above the spray holes to enable said showerhead to drain more completely. Parry ('733) does not teach the airpath comprised of an automatic valve. Langdon teaches an automatic valve adaptable for use when attached to a pipe (note the existence of threads (21 and 13), Figure 1), which is automatically closed when fluid flows through it, and automatically opened when fluid is not flowing. As for claim 3, the air pathway is positioned in a segment of add-on tubing (13') for connecting between the showerhead and a water pipe. As per claims 10 and 11, the valve of Langdon ('393) comprises a hole (V) and a resilient rubber "membrane" in the form of a tapered tubular sleeve (1) that is moved against the hole when fluid flows through the valve, and automatically retracted when fluid is not flowing this admitting air through the hole. As per claim 15, as in a combination, Parry ('733) discloses a showerhead device, having an air pathway (35) for being positioned along a water pathway (13) upstream of spray holes (not numbered or shown, but implied) in a showerhead (15), wherein when water is turned off, air is drawn through the air pathway the said showerhead above the spray holes to enable said showerhead to drain more completely. Parry also teaches the air pathway is positioned in a segment of add-on tubing (13') for connecting between the showerhead and a water pipe. Parry ('733) does not teach the airpath comprised of an

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automatic valve. Langdon ('393) teaches an automatic valve which is automatically closed when fluid flows through it, and automatically opened when fluid is not flowing. As per claims 16 and 17, the valve of Langdon ('393) comprises a hole (V) and a resilient rubber "membrane" in the form of a tapered tubular sleeve (1) that is moved against the hole when fluid flows through the valve, and automatically retracted when fluid is not flowing thus admitting air through the hole. In light of all of the previous information, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the add-on tubing as part of the showerhead device of Parry ('733) with the automatic one-way valve of Langdon ('393) in order to provide a showerhead device that drains automatically after use so that, as a by product of preventing freezing or overheating, microbiological particles cannot grow during the device's stagnancy and clog part of the showerhead device.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSH  
10/03/2006

  
KEVIN SHAVES  
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